

APPEAL NO. 031305  
FILED JULY 25, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 1, 2003. The hearing officer determined that the claimant is not entitled to supplemental income benefits (SIBs) for the 13th quarter. The appellant (claimant) appealed, asserting that she was employed during the first few weeks of the relevant qualifying period and that she looked for work until her doctor placed her on off-work status. The respondent (carrier) responded, urging affirmance. The hearing officer's determination that the claimant "did not return to employment [claimant's underemployment] as a direct result of her impairment" during the qualifying period for the 13th quarter was not appealed.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_; that she was certified to be at maximum medical improvement on June 9, 1998, with a 27% impairment rating; that the claimant did not elect to commute her impairment income benefits; that the 13th quarter of SIBs began on December 25, 2002, and ended March 25, 2003; and that the qualifying period for the 13th quarter began on September 11, 2002, and ended December 10, 2002.

It is undisputed that the claimant was employed for approximately the first three weeks of the qualifying period in a full time position as a research coordinator for a medical facility. The record reflects that on or about September 19, 2002, the claimant submitted her two weeks notice to terminate her employment. The claimant testified that she submitted her notice because she had obtained another job performing nursing work. The claimant testified that she was never able to start her new job because her condition due to the compensable injury deteriorated at the end of September 2002, and the claimant thought that her doctor had taken her off work. The claimant testified that she was unable to obtain the necessary therapy and testing to allow her to promptly return to work. It is undisputed that the claimant did not search for work every week during the qualifying period for the 13th quarter.

In determining that the claimant is not entitled to SIBs for the 13th quarter, the hearing officer found that "the [c]laimant failed to establish by specific, detailed or explanative medical evidence that she was unable to perform any work at all during part of the qualifying period for the 13th quarter[.]" and that during the filing period for the 13th quarter the [c]laimant did not make a good faith effort to seek employment."

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b)(2) provides, among other things, that an injured employee is eligible to receive SIBs if, during the relevant

qualifying period, the employee “has made a good faith effort to obtain employment commensurate with the employee’s ability to work.” Rule 130.102(d)(1) provides that “an injured employee has made a good faith effort to obtain employment commensurate with the employee’s ability to work if the employee has returned to work in a position which is relatively equal to the injured employee’s ability to work.”

Rule 130.102(d)(4) states that a “good faith effort” has been made if the employee:

has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

The hearing officer’s determination that the claimant did not provide a sufficient narrative report from a doctor to establish a total inability to work during the relevant qualifying period pursuant to Rule 130.102(d)(4) is supported by the evidence. The claimant submitted a report from her treating doctor dated December 6, 2002, which indicates that she was advised to stay home from September 27, 2002, through November 27, 2002, due to “pain” and “numbness and tingling face/scalp.” The report does not state how these conditions caused a total inability to perform any work in any capacity. Additionally, a follow up note from this same doctor dated December 11, 2002, indicates that the claimant had mistakenly believed that the doctor had taken her off work. Whether or not the claimant met her burden to show entitlement to SIBs pursuant to Rule 130.102(d)(4) presented a factual question for the hearing officer to resolve. Nothing in our review of the record indicates that the hearing officer’s determination in this regard is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer erred in determining that the claimant is not entitled to SIBs for the 13th quarter because she failed to make a good faith effort to seek employment during the qualifying period. It is clear from the hearing officer’s statement of the evidence that she reached the conclusion that the claimant failed to establish good faith as required by Rule 130.102(d)(1) because the claimant was not employed during the entire qualifying period and she did not seek employment each week that she was not employed. Rule 130.102(d)(1) provides that a claimant has made a good faith effort to obtain employment commensurate with the claimant’s ability if the claimant had returned to work “in a position which is relatively equal to the injured employee’s ability to work.” A claimant need only show good faith by complying with any one of the subsections of Rule 130.102(d). Texas Workers’ Compensation Commission Appeal No. 020713, decided April 17, 2002. In addition, if the claimant complies with Rule 130.102(d)(1) during any portion of the qualifying period, that will satisfy the good faith requirement of Section 408.142(a)(4) and Rule 130.102(b)(2). Texas Workers’ Compensation Appeal No. 030298, decided March 10, 2003. Under the facts of this

case, we hold that the claimant satisfied the good faith requirement of Rule 130.102(d)(1) and is, therefore, entitled to SIBs for the 13th quarter.

The hearing officer's decision that the claimant is not entitled to SIBs for the 13th quarter is reversed, and a new decision is rendered that the claimant is entitled to SIBs for the 13th quarter.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CT CORPORATION  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge